



**COVID-19 Update
To the Members of the Syracuse Builders Exchange
Earl R. Hall, Executive Director**

Important information from April 1, 2020:

As media outlets continues to report on the anticipation of continued work at home orders, construction projects shutting down, employees being laid off and more New Yorkers being infected with the coronavirus, the bombardment of phone calls and emails at the Syracuse Builders Exchange (“SBE”) have subsided a bit. Contractors, employees and project owners alike understand the sobering reality of a pandemic, impacting all segments of our society. Construction is not immune, despite some of the relief afforded in last Friday’s guidance from Empire State Development (“ESD”).

What is the Current State of the Economy?

According to Goldman Sachs, the United States economy is expected to report real GDP growth of -9% in the first quarter, with economic forecasters anticipating a -34% growth in the second quarter. I suspect the upstate New York economy may reflect the national economy once the numbers are released. Godman Sachs is also forecasting unemployment to hit 15% by mid-year, with approximately 3.3 million Americans filing for unemployment last week. Moody’s is predicting another 4.5 million first-time unemployment filings this week which would be historic.

NYS Budget

Earlier today it was reported by various media outlets that Governor Cuomo and NY state lawmakers struck a tentative budget deal, including an overhaul of last year’s bail reform legislation and not cutting funding to public education. It remains unclear what the total annual NYS budget amount will be or how the Governor, Assembly and Senate will close an anticipated \$15 billion budget deficit.

Virtual Training Coming

Thanks to the efforts of Lisa Brownson, Safety Source Consultants, LTD (WBE) and Tony Esce Sr. of United Rentals, the Syracuse Builders Exchange (“SBE”) is pleased to announce the delivery of the OSHA 10 and OSHA 30 virtual classes to our members later this week. These classes will be available 24/7 online, at a discounted rate. I am grateful for the collaborative effort to deliver important safety training to our members and your employees. More on this later in the week.

March 30th Webinar Q & A

SBE and Sheats & Bailey, PLLC were inundated with questions from the construction industry during and after last Friday’s webinar. Many came with an email address, thus allowing Sheats & Bailey, PLLC to engage the party asking the question. Ed Sheats and I thought it would be helpful if we disseminated this information to SBE members for informational purposes only. These responses represent the state of the

NYS ESD Guidance as of the date of the webinar. Since that time, there have been changes. Those changes have included subsequent Guidance issued by ESD on Sunday, March 29th. Please see attached for the Q&A information.

Today's COVID-19 Webinar

Today's 1:00 PM webinar focused on the impact the coronavirus has had on the commercial construction industry. Our panel of industry experts from OneGroup addressed the following items during the webinar:

1. Implications for Non-essential businesses
2. Furlough versus lay-off considerations
3. Families First Coronavirus Response Act (FFCRA)
4. CARES Act, business loans and unemployment implications
5. Employee benefits matters

Attached please find important material which was reviewed and discussed during the webinar. The webinar and material can be reviewed anytime at www.syrabex.com, click on COVID-19 update.

Thank You

A special "thank you" to all of you – and you know who you are – who have taken the time to drop us a note of encouragement or to say "thank you". Those simple, kind words are so appreciated by our entire staff, especially in a time of uncertainty. Acts of kindness are motivating, inspiring our employees to continue our work to support our member employers, your employees and the construction industry in general.

Thursday will bring a new set of circumstances and challenges. Our employees and I remain available to assist our members each day, so feel free to give us a call or drop us an email.

MEMORANDUM

TO: **Webinar Participants**

RE: **Responses to Questions from Webinar**

DATE: **April 1, 2020**

During the March 30, 2020 webinar with the Syracuse Builders Exchange, a number of questions came in electronically. Many came with an email address and we were able to engage the party asking the question. Some did not. For those that did not we have prepared these very general responses. These responses represent the state of the NYS ESD Guidance as of the date of the webinar. Since that time, there have been changes. Those changes have included the Guidance issued by ESD on Sunday, March 29th, which reads in part:

Local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from the essential business restrictions.

Also is the Guidance received Monday afternoon from ESD:

Construction in support of essential businesses is permissible, but only with appropriate social distancing and cleaning/disinfecting precautions. If those cannot be met, the project should be postponed.

We expect more changes to occur. The answers to these questions are intended as general information, not legal advice. They are very much subject to change.

Thank you for participating in our webinar with Syracuse Builders Exchange on Friday, March 27th. We are writing to respond to your questions. This response is not legal advice. For us to provide a legal opinion we need to examine the matter more closely. That will likely include our consideration of the project bid documents, contract and front end. It may also require us to know more about your company and the project or projects. This response is for your general information, it is not advice as we do not have complete knowledge of your situation.

1. Healthcare construction appears to be exempt however is further guidance needed to determine if it only applies to work directly related to patient care?

RESPONSE:

We understand you want to know if further guidance is needed to determine whether healthcare construction only applies to work directly related to patient care. The ESD guideline states Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. Until further guidance is distributed by ESD then the exemption applies to all health care facilities.

2. Can I keep one person in office to answer calls we service for hospitals? For purposes of this section construction work does not include a single worker who is the sole employer/work on a job site.

RESPONSE:

We understand you want to know if you can keep one person in the office to answer calls. Your company provides services for hospitals. Under the ESD guidelines if your firm is a vendor, supplier or provides other support to an Essential Business, which is required for the Essential Business's operation, then your business may be exempt from the employment reduction provisions contained in Executive Orders 202.8. However, only those employees necessary to support the Essential Business are exempt from the employment reduction requirements of Executive Orders 202.8 and your business is still required to utilize telecommuting or work from home procedures to the maximum extent possible. Hospitals are an essential business under the ESD. So if you are a supplier, vendor or provide support to the hospital necessary for the hospital's operation, then you may keep one person in the office to answer the calls.

Additionally, the ESD also provides that a non-essential business is allowed to have a person visit the closed office each day temporarily to perform a specific task such as picking up mail and listening to messages as long as the person will not be in contact with other people.

3. Can you touch on projects being done for a federal agency such as the social security administration?

RESPONSE:

We understand you would like us to discuss construction projects for federal agencies. That is a broad question. So, we are going to narrow it to "are construction projects for federal agencies allowed to continue?" Federal Construction projects will be governed by the contract and FAR regulations. We would suggest you first speak to the Contracting Officer about the continuation of the project. However, if you have not received a stop work order, order of suspension or change order regarding your work, then you may proceed. If you are unable to proceed because of the Coronavirus pandemic, then you must follow the terms of your contract and FAR with regard to stopping work, notices that must be given and the timeframe those

notices must be given in. If the work on the project is stopped, you will need to give timely notice pursuant to the contract and FAR regulations of any additional costs incurred due to the stoppage or suspension of work.

4. If the school is serving meals daily doesn't that mean occupied? Making it essential.

RESPONSE:

We understand you want to know if because a school is serving meals, does that make the school essential? Schools were not originally listed as an essential business in the ESD guidelines. Schools were ordered to close by Executive Order 202.4 until April 1, which was extended to April 15, 2020 by Executive Order 202.11. Per Executive Order 202.4 schools were instructed to come up with a plan for the distribution and availability of meals for students. However, in an email yesterday, ESD advised that schools may be exempt from the essential business restrictions.

5. What about trucking companies, where the driver remains in the truck by him or herself?

RESPONSE:

We understand you want to know if a trucking company where the driver remains in the truck by him or herself may continue to work. There are a total of 12 exceptions to the ESD Guidelines. Please take a look at exception 2, "Essential Infrastructure" which includes "transportation, infrastructure such as a bus, rail, for hire vehicles, garages." Under the ESD guidelines if your firm is a vendor, supplier or provides other support to an Essential Business, which is required for the Essential Business's operation, then your business may be exempt from the employment reduction provisions contained in Executive Orders 202.8. However, only those employees necessary to support the Essential Business are exempt from the employment reduction requirements of Executive Orders 202.8. Your business is still required to utilize telecommuting or work from home procedures to the maximum extent possible. For example, hospitals are an essential business under the ESD, so if you are delivering necessary medical supplies for the hospitals then you are exempt. Transporting food to grocery stores would be in support of an essential business.

6. What if on an essential job I am not able to perform work maintaining 6' social distancing?

RESPONSE:

We understand you want to know if a job may continue with individuals who are not able maintain 6' social distancing while performing work. ESD guidelines for construction state "Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. **Sites that cannot maintain distance**

and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments.”

7. If you run an owner operator excavation business can you continue work?

RESPONSE:

We understand you want to know if as an owner operator excavation business you can continue to work. ESD guidelines for construction state “Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters.” The language about a single worker who is the sole employee/worker on a job site is open to interpretation and ambiguous on whether that would allow you to keep working on a non-essential site. Therefore, due to the fines involved if you are working on a non-essential construction project, we suggest you err on the side of caution and stop work. If you are working on an essential construction site, you may proceed with work.

8. What about the fed stimulus to keep employees on payroll and get money back for up to 8 weeks and what about the new idea of closing/opening based on county you reside in I heard Syracuse is fighting it?

RESPONSE:

We understand you want to know about the federal stimulus offered under the newly enacted CARES act. The CARES act enacted the Paycheck Protection program, which allows businesses with less than 500 employees suffering due to the coronavirus outbreak to get an SBA loan to cover the costs related to employee compensation and benefits including payroll costs, continuation of health care benefit, rent, utility payment, etc. The borrower under the paycheck protection program shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on rent, payroll costs for workers making less than \$100,000.00, interest on mortgage and utility payments. Employers that hire employees back that were laid off due to COVID-19 will not be penalized. The CARES act also makes other emergency loans more accessible to businesses suffering due to the coronavirus outbreak. You should contact your local SBA to obtain the loan application for the paycheck protection program and to learn more about the other emergency loans.

The second half of your question about opening/closing based on county you reside in appears to be a statement you would like our thoughts on, not an actual question. The current Executive Orders are clear. Non-essential businesses statewide are to send 100% of their workers home.

9. If I am the sole office employee at our office and I'm in charge of all accounting, payroll etc. can I still come to the office since I am alone?

RESPONSE:

We understand you want to know if you may come into the office alone to perform work. Under the ESD guidelines an employee of a non-essential business is allowed to visit the closed office each day temporarily to perform a specific task as long as the person will not be in contact with other people. We need to now more about the business you work for.

10. If our construction jobs get shut down due to NYS stay at home orders-
Are we responsible to pay our field union construction employees 5 days of sick time and then they are eligible for Paid Family Leave?
Or since they are staying home due to NYS stay at home orders they are only eligible for unemployment/disability?
Also, is a union employee handled differently than an office staff employee when it comes to how we handle the 5 days of sick pay and or staying home due to NYS stay at home orders.

RESPONSE:

We understand you want to know if employees are ordered home and unable to work due to NYS executive order 202.8, if you must pay five days paid sick leave under NYS Emergency COVID-19 Paid Leave. NYS Emergency Paid Leave is available only to employees who have not been laid off and who are under a mandatory or precautionary order of quarantine from NYS State or State or Local Department of Health. Executive Order 202.8 is not a mandatory or precautionary order of quarantine as defined by the Department of Health. Therefore, the employee would not be eligible for NYS Emergency Paid Leave. Under the new Federal CARES Act an employee who cannot work due to Coronavirus pandemic may collect unemployment insurance even if the employee has not been laid off. Your employee should seek unemployment. As for Union employees, if you are their current employer you would be responsible for the NYS Emergency Paid Leave if the employee was under a mandatory or precautionary order of quarantine. The Executive order is not an order of quarantine. As for unemployment the employee would need to check with his union and the unemployment agency.

11. On the 14 paid sick days, for union employees who qualify, do they get fringes too? If you don't know, see if you can find out and address at your 2:00 webinar

RESPONSE:

This may be dictated by a collective bargaining agreement.

12. When do the new essential business guidelines go into effect?

RESPONSE:

We understand you want to know when the business guidelines go into effect. The ESD guidelines go into effect immediately. On work that must be shut down you must secure the site and make it safe before leaving.

13. What is the employer's responsibility if an employee, who decides to self-quarantine for a period of time (i.e. won't be coming in) because they are concerned about getting COVID-19 but currently not sick, somehow contracts COVID-19 while they are out or someone else in their family has and now they must stay home and take care of that person? Are we still responsible for paying them the paid sick time that is required by law?

RESPONSE:

We understand you want to know if you are responsible to pay sick time for an employee that was out of work and contracted COVID-19 while in self-quarantine. If the employee was still employed by you when he or she contracted the virus, then you would be responsible to pay him sick leave under the Federal Families First Coronavirus Act.

14. As a "building material store" where/which type of commercial/residential construction sites are we able to make deliveries to; if any?

RESPONSE:

As a building material store, you're looking for clarity on which construction sites your business can deliver its product to. The relevant portions of the Guidelines in your regard include Sections 2, 3, 4 and 8. Please see the ESD Guidance. Keep in mind that these guidelines have already changed and could change again at any time. Under the current guidelines, your business could very likely be exempt as an essential retail services in the business of supplying building materials.

The ESD Guidelines list 12 exempt businesses. Exemption 4, "Essential Retail" includes "hardware, appliance and building material stores." Therefore, a building materials store is not subject to the 100% work at home requirement.

Also, when you look at the ESD Guidance, the second full paragraph reads in part "Operations that are necessary to support essential services, supplies or support are exempt from the workforce reduction restrictions." Reference as well the first several paragraphs of this memorandum regarding changes since the date of the webinar.

As to your question regarding which project sites you may deliver material to, we would suggest that you inquire with your client as to whether the project site has been shut down as a

result of the Executive Order, and if not, inquire as to what type of project it is, and how it is an essential construction project. You might even want to consider requiring your customers to pick up the materials themselves, and not become entangled with the project at all.

15. Are rental companies essential since they may provide equipment to any of the essential construction projects?

RESPONSE:

As we understand it, as an equipment rental company, you are looking for clarity on which construction sites your business can deliver its equipment to. There is no specific exclusion for your line of work, so we must look to the types of industries and services you provide equipment to and inquire as to whether they are “essential.” Keep in mind, however, that these guidelines have already changed, and could change at any time once again. To the extent you rent equipment to clients for “essential” construction projects, you should be in compliance with the guidelines.

When you look at the ESD Guidance, the second full paragraph reads in part, “...operations that are necessary to support essential services, supplies, or support are exempt from the work force reduction restrictions.” If your business falls within that definition, as it likely does, and supplies to the 12 numbered exceptions, then you may be exempt. Of those 12, the ones that seem possibly relevant to your business (you will know better than us) are #2 Essential Infrastructure, #9 Construction (as defined within the exception). But other exemptions may apply, we can’t say as we do not know enough about what you supply and to where.

We would suggest that you inquire with your client as to whether the project site has been shut down as a result of the Executive Order, and if not, inquire as to what type of project it is, and how it is an essential construction project. You might even want to consider requiring your customers to pick up the equipment themselves, and not become entangled with the project at all.

16. Does the last line of section 9 mean owner operators can continue working in excavation?

RESPONSE:

The individual worker reference in the guidance is poorly written and unclear. Many interpret that to mean that if you just put one person on a project at a time then there is no issue. We think it can be interpreted differently. As such, there are AT LEAST two different ways to interpret that paragraph.

In order to provide a legal opinion; however, we would need to evaluate more about what you do and examine the documents for the projects involved. This answer is provided as general information and should not be relied upon as legal advice. We appreciate your membership in SBE. Please check out our website for more information about the services our firm provides.

This information is for informational purposes only and should not be relied upon as legal advice or opinion. To give a legal opinion on whether your company or construction projects you are working on would be considered essential construction and may continue, our office would need more information about what work you are doing, the project or projects the work is for and we would need to examine the contract and documents for the project involved. If you would like our legal opinion please call Sheats & Bailey, PLLC directly at 315-676-7314, or contact us by email.

Thank you for your membership in the Syracuse Builders Exchange. Remember this is a fluid situation so please make sure to visit Syracuse Builders Exchange's website at syrabex.com to keep updated on the latest developments.

This is for informational and educational use only. Nothing in this discussion should be considered legal advice. Please consult with the appropriate attorney or advisor before addressing any situation raised in this discussion.

Please find any FAQs discussed in our webinar here: <https://www.onegroup.com/covid19-updates/>

Information from Wednesday, April 1 Webinar:

Business Insurance Claims and Coverage

Yesterday, The New York State Department of Financial Services adopted an emergency regulation requiring New York State regulated issuers of life insurance and property and casualty insurers to provide relief to New York State consumers and businesses experiencing financial hardship due to COVID-19.

Consumers experiencing financial hardship due to COVID-19 may defer paying life insurance premiums for ninety (90) days.

- Consumers and small businesses experiencing financial hardship due to COVID-19 may defer paying premiums for property and casualty insurance for sixty (60) days.
- Premium finance agencies are required to provide the same relief as insurers.

We have reached out to a number of our carrier partners on this subject: The feedback that we're receiving from insurance carriers is that this is not automatic... and we would ask that you please keep the communication channels open with your OneGroup Team. The insurance carriers had told us that while they will make accommodations they will be doing so on a case by case basis as they can be specific to your circumstances. Things that they will consider - timing of the renewal, number of installments, will a shift in the exposure also need to be taken into consideration, etc.

If you do find that you anticipate a shift in exposure please let us know; maybe your operations are changing, location(s) will be vacant, manufacturing a different product to assist in combatting product shortages, etc. Please keep us informed so that we may assess the risk with the carrier and provide you with good direction and advice.

We continue to receive numerous questions from clients and we welcome them... should you have any questions relative to coverage, potential claims, payment terms or a shift in exposure, please do not hesitate to reach out to a member of your team.

Human Resources

New York State Specific Updates

Executive Order – Decrease in In-Person Workforce

Governor Cuomo has ordered businesses to decrease their in-person workforce **by 100 percent, effective Sunday evening (March 22, 2020 at 8:00 p.m.)**.

On March 29, extended through April 15.

- Governor Cuomo has directed the state nonessential workforce to continue to work from home for an additional two weeks through April 15th.
- In-person workforce restrictions, which have been implemented through various executive orders are also extended until April 15th.

Construction – March 27 Announcement

- All non-essential construction must shut down except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site).
- Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.
- For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site.

March 27, 2020 announcement; many of you know of the executive order to reduce in-person staff (50, 75, 100%)

<https://esd.ny.gov/guidance-executive-order-2026>

Families First Coronavirus Response Act (FFCRA) Updates and FAQs

March 25, 2020

On March 25, 2020, the Department of Labor (DOL) published a notice for employers to use to satisfy the posting requirement in the Families First Coronavirus Response Act (FFCRA). Covered employers can find the FFCRA notice [here](#).

https://www.dol.gov/sites/dolgov/files/WH/WH1422/FFCRA_Poster_WH1422_Non-Federal.pdf

Per the FAQs, each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may

satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

59 FAQs provided by the DOL – Selected 5 to Review

What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to

If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current [12-month period determined by your employer](#), you may take the remaining portion of leave available. If you have already taken 12 workweeks of [FMLA](#) leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CARES Act

On March 25, 2020, the Senate unanimously passed (96-0) the [Coronavirus Aid, Relief, and Economic Security Act](#) ("CARES Act"), commonly known as "Phase Three" of coronavirus economic relief. The CARES Act provides stimulus to individuals, businesses, and hospitals in response to the economic distress caused by the coronavirus (COVID-19) pandemic.

On March 27, 2020, the House of Representatives passed the CARES Act by voice vote.

President Trump signed the bill into law that same day.

Unemployment Insurance

Creates a new Pandemic Unemployment Assistance program (through December 31, 2020) to help those not traditionally eligible for Unemployment Insurance (UI), including self-employed individuals, independent contractors, those with limited work history and those who are unable to work as a result of the coronavirus public health emergency.

Provides additional \$600/week payment to each UI or Pandemic Unemployment Assistance recipient through the end of July 2020.

Provides funding for the 1st week of unemployment for states to waive the traditional "waiting week" before benefits begin.

Provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are no longer available. (total 39 weeks; generally 26 weeks)

Provides states with temporary, limited flexibility to hire temporary staff or re-hire former staff to quickly process unemployment claims.

Provides funding to states to help them maintain short-time compensation programs to prevent layoffs, as well as expand these work sharing programs in the future.

Summary provided by SHRM <https://www.shrm.org/hr-today/public-policy/Documents/SHRM%20Analysis%20CARES%20Act%20-%20Employer%20Provisions.pdf>

<https://labor.ny.gov/ui/pdfs/pandemic-unemployment-assistance.pdf>

<https://labor.ny.gov/ui/pdfs/cares-act-need-to-know.pdf>

Employee Benefits

Much of what was covered in our last update relative to the CARES act has now been passed into law.

The bill expands coverage beyond what was in the Families First bill passed on March 18th, by requiring health insurers to pay for coronavirus testing beyond those that are FDA-approved, including lab and state-developed tests as well as other tests approved by HHS.

Accessibility for telehealth is also expanded. High-deductible health plans with HSAs may now allow pre-deductible coverage for telehealth and other remote services, as well as allowing the use of HSAs for the purchase of over-the-counter medications without a prescription.

Previous guidance on telehealth allowed the ability to cover coronavirus related services at no cost, prior to the annual deductible being satisfied. Some carriers were allowing all telehealth services be covered at no cost. Though many did not feel that the IRS would be strict in enforcing the HSA eligibility rules in this case, we now have legal guidance allowing this.

This provision will allow for carriers and self-insured groups who offer telemedicine to do so at no cost or copay for ALL visits. Allowing telemedicine at no cost for all visit types will help reduce traffic at provider offices.

Please note, this is only temporary relief. This safe harbor only applies for plan years beginning before January 1, 2022.

In addition to allowing all telemedicine to be no cost on all plans, there have also been expansions to the usage of HSAs, HRAs, and Medical FSAs included in the act.

HSAs, FSAs, and some HRAs may be used to purchase over-the-counter drugs without a physician's prescription. This rolls back the prescription requirement imposed by the ACA and is effective for expenses incurred and amounts paid after December 31, 2019.

Also included in the bill is a new ability to purchase menstrual care products including tampons, pads, liners, and similar products with an HSA, FSA, and some HRAs.

Should a vaccine become available, the CARES act will require that all health plans provide free coverage without cost, within 15 days of the vaccine meeting federal criteria, removing the usual one-year delay.

Though this may be the extend of the health insurance related updates, short of a phase four agreement, we do continue to hear of different carrier updates. These updates include covering coronavirus related treatment in full, allowing special enrollment periods for current employees, and relaxing eligibly policies for those employers forced to lay off or furlough employees.

With coverage and flexibility varying by carrier, and funding model, we suggest reaching out to your carrier or consultant with any plan specific questions.

Retirement

Here is a [helpful resource](#) from the American Retirement Association that was referenced during the call.

Small Business Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act - References, Attachments, Resources

- U.S. Chamber of Commerce – Coronavirus Emergency Loans SB Guide & Checklist
- MACNY – CARES Act: Q&A on Key Provisions
- Bond Schoeneck & King – What to Expect in CARES Act - 3/27/20
<https://www.bsk.com/news-insights/what-to-expect-in-the-cares-act>

What is the CARES Act?

Recently enacted Federal government legislation to help small and large businesses keep workers employed during the pandemic and economic downturn.

What does it do to help Small Businesses?

Creates a new loan program run out of the Small Business Administration or SBA called the Paycheck Protection Program (PPP). The PPP is designed to provide businesses capital to continue paying their workers during the COVID 19 crisis.

Borrowers will obtain funding by working through their private local banks or other lending institutions (Credit Unions) that are approved by the SBA to participate in the program. Most local banks are already approved to participate.

Before I jump into the details of the program let me comment on where things are with the banks. I've touched base with at least six local banks in the last day and expect to be getting updates from them over next few days.

Like everyone else they are in midst of sorting all this out, reviewing the program and figuring out how to implement it internally at each of their institutions.

- Back and forth with the SBA sorting out details.
- They are getting inundated with calls so patience will be required.
- Bottom line is they don't have all the answers yet – remember that when you contact them.

Best advice I can give you is to reach out to bank with whom you currently do business. Their first priority is going to be to their existing clients. Open the lines of communication. Now is not the time to be changing banks if you can avoid it. Preferable to be working with someone that knows you and your business.

Having said that if it makes sense to do so please let us know and we'll provide you with multiple contact options at local banks.

PPP Program

Who is Eligible for the PPP Program? Limit comments to PPP program

A small business with fewer than 500 employees including full time, part time, or any other status. This includes certain 501(c)(3) non-profits, veteran's organizations and tribal businesses, Sole proprietorships, independent contractors and self-employed individuals.

What Will Lenders be Asking for or Need?

Was the business operating and paying salaries, payroll taxes, before February 15, 2020.

You will have to certify that:

- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
- You don't have another application in process for the same purpose.
- Must apply before June 30, 2020.
-

Normal analysis of historical financial information?? – 3 years fin statements, business and or personal tax returns – not sure but be prepared. Will need specific payroll data etc.

The Bank will Not Require:

- A personal guarantee
- Collateral
- Fees – waived
- 100% guaranty vs the typical 75-85%

How much can I Borrow?

Up to 2.5x the borrower average monthly payroll costs based on the prior year, not to exceed **\$10 million**.

In order to calculate your average monthly payroll costs I'm going to refer you to the U.S. Chamber of Commerce brochure tagged on our website. Certain expenses are included and other excluded. Calculations included for seasonal businesses and for business with employees earning tips.

For what purposes may a business use its loan?

Proceeds may be used to pay employee compensation & benefits including salaries, health care costs, retirement benefits, vacation, etc. Also rent, mortgage, lease, payments, utility bills. Double check this with the Bank

Repayment

For PPP loans obtained between February 15, 2020 to June 30, 2020, the PPP lender will allow a complete deferment of repayment of at least 6 months, and up to a maximum of one year.

Is their Loan Forgiveness?

Borrowers are eligible for loan forgiveness equal to certain costs incurred and payments **made during the 8-week period starting from the date of loan origination.**

Eligible costs and payments include: payroll costs (on salaries up to \$100,000), mortgage, rent, and utility payments.

Can Loan Forgiveness be Reduced?

The amount of loan forgiveness eligibility can be reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.

What if I bring back employees or restore wages?

To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire workers previously laid off will not be penalized for having reduced their payroll.

Any portion of a loan not forgiven can be repaid over the course of 10 years with an interest rate of at most 4%.